Section One: CSO Formation, Operation, & Dissolution

The questions in this section pertain to the laws and regulations governing civil society organizations (CSOs). CSOs refer to a wide range of groups including the following: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations. The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question One: To what extent can individuals form and incorporate the organizations defined?

Freedom of association is guaranteed by the Mexican Constitution, with Article 9 stating that “individuals shall be entitled to associate or to gather with others in a peaceful way to achieve a lawful objective”. Therefore, whether it is a community group, a non-governmental organization (NGO), a labor union, an indigenous group, a charitable organization, a faith-based organization, a professional association, or a foundation, a CSO may be legally incorporated according to the applicable law. For faith-based organizations, this law is the Religious Associations and Public Cult Law, while the Labor Law, state-level Civil Codes, and Private Assistance Laws regulate the conduct of labor unions, civil associations and charitable organizations respectively. As a result of this diversity, the requirements and needed documentation vary and are dependent on the type of CSO. Mexican law also requires that the bylaws be notarized before a public notary, who subsequently files the incorporation articles at the Public Registry of Property. Consequently, the process to form a Mexican CSO is completed in an independent and apolitical manner.
The law is relatively permissive regarding who may serve as a founder. For NGO or charitable organizations, there are two main legal entities under which an organization can incorporate: as a civil association or as a private assistance institution. If an organization is formed as a civil association, there is no minimum capital or assets required at the time of establishment. If, however, it is formed as a private assistance institution it must be incorporated according to the law, which specifies that public servants may not serve as founders. The process of incorporating at the Public Notary requires reasonable documentation and the payment of a registration fee of between $600 USD and $1,000 USD.

Question Two: To what extent are CSOs free to operate without excessive government interference?

Generally speaking, Mexican CSOs enjoy the freedom to run their internal affairs provided they are in accordance with the requirements associated with their organization type. For instance, a civil association’s supreme governance body is the General Associates Assembly. In addition, a Board of Directors may also be appointed and authorized to represent and manage the organization. Civil associations are even less regulated, and do not have any specifications for their internal governance.

Other kinds of organizations, however, such as those incorporated as private assistance institutions are subject to regulations that interfere with their internal governance. Such organizations, formed by founders and managed by trustees—known in Spanish as Patronato—are supervised or controlled by a government entity at the State level called the Junta de Asistencia Privada (Private Charity Board). Important decisions made by a private assistance institution regarding matters such as creation, dissolution, fundraising, investment, donations, and budgets have to be approved by this local government entity. In this sense, this regulation can inhibit free internal governance. CSOs also have to present their annual reports to the fiscal authority. Each year, organizations authorized to receive tax deductible receipts must also make public general information on the Transparency Section of the Servicio de Administración Tributaria’s (Tax Administration Service) web page. Starting in 2015, the obligation to
audit an organization’s financial statements is now voluntary. Organizations that receive public funds and are registered under the Federal Registry of Civil Society Organizations must also present annual reports.

There are no cases of CSOs that have been restricted from participating in networks and organizations and are free to use the Internet and all forms of social media due to the promulgation of the recent Telecommunications Law Reform.

**Question Three: To what extent is there government discretion in shutting down CSOs?**

The governing body of a CSO is permitted to voluntarily terminate its activities, dissolve itself as a legal person, and liquidate its assets. In the case of a civil association, the organization’s governing body is also able to voluntarily terminate the CSO. There are several causes for which a civil association may be terminated, including most notably instances wherein the reason an organization was created no longer exists or if an organization has insufficient funds. In the case of a civil association, its governing body has to transfer the remaining assets to another organization with a similar purpose. But if the organization is authorized to receive tax deductible receipts, the assets have to be allocated to another organization with the same status.

However, in the case of a private assistance institution, the Private Charity Board (*Junta de Asistencia Privada*) has to declare the termination of an institution either for reasons established by the law, or upon the request of the trustees. Upon dissolution, this government entity proceeds with liquidation of assets and decides which private welfare institution will receive its assets, taking into consideration the founder’s will and the original purpose of the organization. The Private Charity Board itself has a governing body which makes this such decisions through consensus.

**Section Two: Domestic Tax and Fiscal Issues**
The questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically. The scoring for these questions pertains to the donor and receiving entities.

**Question Four: To what extent is the tax system favorable to CSOs in receiving charitable donations?**

CSOs in Mexico may be entitled to tax incentives depending on the activity pursued. For example, CSOs dedicated to charitable purposes, education, human rights, culture, environment, or technological and scientific activities are all eligible to be authorized to receive tax deductible receipts. However, not all CSOs that are tax exempt are eligible to receive authorized donee status. For instance, sports, trade unions and religious organizations may not be authorized donees, but can nonetheless be tax exempt. According to a recent provision in the Income tax Law, organizations with an authorized donee status can engage in business activities—a valuable designation for many groups. If the income of such activities is less than 10% of total income, the CSO does not pay a tax on that income. At the local level in some states, charitable organizations incorporated as private assistance institutions are eligible for payroll exemptions. For example, in Mexico City, CSOs are eligible to receive tax exemptions in the form of property and payroll tax exemptions, as well as other local taxes.

As of January 2015, there were 28,829 organizations registered under the Federal Registry of Civil Society Organizations—not including labor unions, cooperatives, and political or religious associations. Furthermore, 7,902 have the authorization to receive tax deductible status. Out of these organizations, around 4,000 have both the authorization to receive tax deductible receipts and have been registered at the Federal Registry. While the Federal Registry allows organizations to apply for Federal Government funds, authorization by fiscal authorities permits organizations to be tax exempt and their donors to receive tax incentives.

At the national level, there is a ceiling on the incentives that can be claimed on such eligible donations and both corporations and individuals are
permitted to deduct up to seven percent of their taxable income paid during the fiscal year. The value of in-kind donations can also be included in the ceiling. Donations can be made to organizations that are authorized, including government entities, international organizations, and authorized CSOs. If a donor does not wish to claim a deduction, it may make a donation to any kind of organization legally incorporated for licit purposes.

Question Five: To what extent is the tax system favorable to CSOs in receiving charitable donations?

The types of CSOs eligible for income tax exemption includes: religious associations; groups involved in formal education, sports, technological or scientific research; unions; chambers of commerce; and associations of professionals, neighbors, or rural residents. The range of CSOs eligible to receive tax deductible donations is, however, considerably narrower. The main activities that are authorized include the provision of aid to: the needy, including medical, psychological, prevention, attention in disasters, intra-family violence, legal, training for employment and funeral assistance; educational institutions; technological or scientific research; support for culture and the arts; environmental protection and the preservation of national treasures; scholarships for studies at certified educational institutions; authorized donees or the government; and to the defense and promotion of human rights. With the last Tax Reform published in December 2013, new social objectives were added to the list of purposes eligible to receive tax deductible receipts and included civic activities and initiatives promoting gender equality and consumer rights.

Unfortunately, to obtain donee status, it is necessary to present a letter from a governmental entity that certifies the nonprofit activities of the applicant. This can be difficult to obtain because—in most cases—there is no designated office for CSO regulation within most governments. Since 2004, the enacted Federal Law on Promotion of the Activities Conducted by Civil Society Organizations has established a wider range of organizations recognized to be of public benefit. Nonetheless, though some activities overlap with the Income Tax Law in terms of tax incentives, others are left out. Therefore the Income Tax Law should be harmonized with the
Promotion Law in order for those organizations whose activities fall under the Promotion Law to also be eligible to receive tax deductible donations under the Tax Law.

Section Three: Cross-Border Philanthropic Flows

The questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities. This category includes open-ended questions and ranking questions.

Question Six: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

While Mexican CSOs are allowed to receive cross-border donations, recently enacted anti-money laundering legislation—the Federal Law for Prevention and Identification of Transactions with Funds from Illegal Sources—established new standards requiring donors, both individuals and corporations of either domestic or foreign origin, to provide ample information—such as the identification (ID) of the donor legal representative—to the government—something not previously required.

Regarding tax incentives, only authorized donee organizations are able to receive charitable contributions from abroad without restrictions or extra costs. This status also guarantees that their income from such sources is tax exempt. Mexican law also provides a number of incentives to import in-kind donations, provided they comply with the provisions of the customs laws and related regulations. The Ministry of Finance has simplified the process of obtaining the permits and allows CSOs to complete and submit them online.

Mexico also has a double taxation treaty with the United States under which Mexican organizations can qualify to be equivalent to U.S. charities for tax purposes. This allows U.S. citizens to receive the same tax deductions when
donating to qualified Mexican organizations as they would if donating to a U.S. organization.

**Question Seven: To what extent is the legal regulatory environment favorable to sending cross border donations?**

The county’s tax law has not been designed to incentivize sending charitable contributions abroad. While private entities in Mexico may receive tax benefits when sending contributions to organizations abroad, they may receive them only if they are donated to International entities to which Mexico is a full member, provided that the purposes for which these organisms were created correspond to the activities authorized to receive tax-deductible donations in Mexico. Nevertheless, Mexico is part of a double taxation treaty with the U.S. under which identical tax incentives are provided on cross border donations for certain type of organizations. According to the treaty, deductions can only be claimed by US tax payers that derive at least some income from Mexican sources and vice versa. Consequently, while a person is able to send cross-border contributions, in general, it will not be tax deductible. In the case of in-kind donations, they will be subject to customs and duties.

**Section Four: Socio-Cultural Narrative**

The questions in this section will not be used in the final ranking. Instead, these questions will be used to provide a more complete picture of the philanthropic environment in the final report. In addition to the expert’s narrative, CGP will compile data from other sources, such as the World Values Survey and the Gallup World Poll to societal perception and cultural environment of philanthropy.

Philanthropy has long been valued by the inhabitants of Mexico, and historically the Catholic Church has encouraged philanthropic activities since Colonial times, and was instrumental in the establishment of welfare institutions as an assertion of religious values. More recently, Mexican citizens have taken a more participatory role in the country’s political, economic, and social development. As a result, the numbers of both
charities and civil society organizations have grown. In the last decade, organizations dedicated to diverse activities such as human rights, environmental sustainability, research, and civic education have enjoyed particularly rapid growth.

During the 1990s, the sector was particularly instrumental in improving human rights. In Mexico, the nonprofit sector is diverse in both its causes and in its interactions with other sectors, including the corporate and government sectors. However, and despite the many activities of Mexican CSOs, the country’s population is not well acquainted with its civil society. As a result, Mexican civil society is currently working to become more consolidated in order to have a greater—and more visible—impact on policy.

The number of CSOs active in the country is rather small considering the large population of the country. According to the official data, the Secretariat of Labor and Social Welfare has 2,682 unions registered with it, while the Secretariat of the Interior’s registry identifies 8,054 Religious Associations. As of October 2014, there were there are 27,517 (21,338 Active and 6,179 Inactive) organizations registered under the Federal Registry of Civil Society Organizations. While these statistics are admittedly piecemeal and do not represent the entire scope of Mexican civil society, they are nonetheless valuable as benchmark estimates.

On the other hand, 7,902 organizations—a relatively high share—have the authorization to receive tax deductible status as of March 2014. Out of these organizations, around 4,000 have both the authorization to receive tax deductible receipts and have been registered at the Federal Registry. These organizations are in turn subject to strict fiscal regulation which ensures transparency, enacts regular financial audits and requires organizations to make their information public.

The time it takes to form an organization may vary depending on different factors. However, on average, it usually takes approximately one month to have an organization’s name authorized by the Ministry of Economy and to have the articles of incorporation (bylaws) notarized before the Public Notary. After this has occurred, the Public Notary still has to file the document in the public Registry of Property. Only after all of these steps have been completed may the organization then be registered in the Federal Taxpayers Registry and assigned a fiscal ID. However, even after this has been completed, it may
take a further three months to be registered at the Federal Registry of Civil Society Organizations and be considered eligible to participate at public funds licitations.